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CAAP-14-0001041

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
LANCE M. NAKASONE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-14-01550)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., and Reifurth and Ginoza, JJ.)

Defendant-Appellant Lance M. Nakasone (Nakasone) was found guilty, after a bench trial, of operating a vehicle under the influence of an intoxicant (OVUIII) by the District Court of the First Circuit (District Court).^{1/} The District Court also found that Nakasone committed the traffic infraction of speeding. Nakasone appeals from the Judgment on his OVUIII conviction and sentence, which was entered by the District Court on July 14, 2014.

On appeal, Nakasone contends that his OVUIII conviction should be vacated because: (1) the District Court failed to properly advise him of his right to testify pursuant to State v. Lewis, 94 Hawai'i 292, 12 P.3d 1233 (2000), and Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995); and (2) the District

^{1/} The Honorable David W. Lo presided.

Court's colloquy regarding trial stipulations was defective under State v. Murray, 116 Hawai'i 3, 169 P.3d 955 (2007).^{2/}

We conclude that the District Court erred in failing to properly advise Nakasone of his rights as required by Tachibana. In particular, the District Court failed to advise Nakasone that if he wanted to testify, no one could prevent him from doing so. See Tachibana, 79 Hawai'i at 236 n.7, 900 P.2d at 1303 n.7. Nakasone did not testify and we cannot say that the District Court's error was harmless. See State v. Hoang, 94 Hawai'i 271, 279, 12 P.3d 371, 379 (App. 2000).

In light of our resolution of Nakasone's Tachibana claim, we need not address the other arguments he raises on appeal. We vacate the District Court's Judgment and remand the case for a new trial on the OVUII charge.

DATED: Honolulu, Hawai'i, April 26, 2016.

On the briefs:

Reiko A. Bryant
Deputy Public Defender
for Defendant-Appellant

James M. Anderson
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Craig H. Nakamura
Chief Judge

Lawrence M. Rife
Associate Judge

Eric W. King
Associate Judge

^{2/} The District Court entered separate judgments on Nakasone's OVUII conviction and his traffic infraction for speeding. Nakasone did not appeal from the judgment entered on his speeding infraction. Accordingly, the District Court's adjudication of Nakasone's speeding infraction is not before this court, and we do not address, and Nakasone is not entitled to relief on, his claim that his "speeding infraction judgment must be vacated."